MONTANA LEGISLATIVE HISTORY

Chapter 439 19 95

Bill H 539 S _____ Original bill & history ____C

H. Committee on Human Services & Aging			S. Committee on Public Health, Welfare & Safety		
Hearing Date(s)	Feb 15	✓C	Hearing Date(s)	Mar 13	✓C
	_____	____C		Mar 15	✓C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 17	✓C		Mar 16	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0539, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill amending the Youth Access to Tobacco Products Control Act, authorizing more stringent local regulations and providing statutory appropriations.

ASSUMPTIONS:
1. The Department of Corrections and Human Services (DCHS) will contract with outside vendors in compliance with the Administrative Rules of Montana for the inspections of any wholesaler, subjobber, retailer, cigarette vendor, or person licensed under 16-11-303, MCA, for failure to comply with the provisions of the Montana Cigarette Sales Act. The funding for this contract will be from existing Substance Abuse Prevention and Treatment Block Grant funds.
2. The tobacco education fees must be deposited in an account in the state special revenue fund. One-half of the money in this account is statutorily appropriated to DCHS to defray the costs of the tobacco education program. One-half of the money in this account is statutorily appropriated to the Department of Revenue (DOR) to defray its costs of implementing the provisions of this bill.
3. It is assumed that all fines collected will be expended for the purposes intended by law.
6. DCHS estimates there will be 20 second or subsequent violations in FY96, creating $10,000 in revenue (20 x $500), and 15 second or subsequent violations in FY97, creating $7,500 in revenue.

FISCAL IMPACT:

Expenditures:

DCHS & DOR:	FY96 Difference	FY97 Difference
Operating expenses	10,000	10,000
Funding:		
Tobacco education SSR (02)	10,000	10,000
Revenues:		
Fines (02)	10,000	10,000

Dave Lewis 2-18-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

LOREN SOFT, PRIMARY SPONSOR DATE

Fiscal Note for HB0539, as introduced

HB 539

REP. BRUCE SIMON asked **Ms. Goudie** about patients being routinely taught by their physician to do self-injections or other types of maintenance. **Ms. Goudie** replied that patients and their families are usually taught those things in rehabilitation centers. However, sterile techniques must be followed. Families are often immune to something in their own home but when someone comes in from outside, the chance for infection is much greater.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: n/a.}

REP. LIZ SMITH asked about liability. **Ms. Booher** replied that models from other states--Kansas, in particular--the liability is assumed by the person who is employing the care provider.

Closing by the Sponsor:

REP. COBB said the issue was not about saving money but rather control over their own lives. He closed on the bill.

{Tape: 2; Side: A; Approx. Counter: 258; Comments: n/a.}

HEARING ON HB 539

Opening Statement by Sponsor:

REP. LOREN SOFT presented HB 539. He read violations that were in statute for selling tobacco products to youth. **EXHIBIT 15** He pointed out that no one had ever enforced these violations under this statute. He said that even though law enforcement has many other pressing concerns, that this needs to be looked at because it represents one of the most deadly and expensive health care issues faced today. He discussed the statistics that former Surgeon General C. Everett Coops said "should alarm anyone who is concerned with the future health of today's children." Annual deaths from smoking are 434,000, which are more than the combined deaths of alcohol, car accidents, fires, AIDS, drugs, suicides, and homicides combined. About 75% of people using tobacco, use it before the age of 18. Tobacco is a "gateway drug" to those using illicit drugs. He pointed out that all states ban the sale of tobacco products to children under the age of 18, but it was a serious problem on how to enforce that.

He described the Montana Teen Institute which is a program where teens get involved with issues and leadership training projects. The teens and an adult will go buy cigarettes from a store and if they say they will not sell to underage persons or ask for their ID that will be great. However, if they sell to the teen, then the adult will be there to hand out literature and materials about the effects of tobacco. They do this three times as a compliance check. On Page 2 of the bill, subsection (4((a), it states what happens if there is a violation of the offense.

Proponents' Testimony:

Jennifer Brannon, Montana Teen Institute at Helena High School, testified in support of the bill. She represented 40-60 kids and discussed the surveys they had conducted in the past few months on tobacco accessibility. She said that 38% of Helena merchants sold to minors.. Her own experience resulted in 100% never asking for an ID and she could also purchase alcohol. Also 100% of vending machines could be accessed for tobacco.

Rick Bender, Roundup, testified in support of the bill. He said he was a survivor of cancer, directly related to his use of tobacco snuff. He started at age 12. He said these laws are unenforceable, even though tobacco kills more people in the state of Montana than homicides or traffic fatalities. The bill would allow this to become enforceable and would get teens involved.

Tim Solomon, Sheriff from Hill County, testified in support of the bill. He said he has been helping with the study. He pointed out that this was not a sting, but rather an education to work with the merchants.

Casey McKinney, aged 15 and a freshman at Havre High School, testified in support of the bill. He described how easy it was to obtain cigarettes. He said there were youths as young as eight years old that were just starting to smoke. **EXHIBIT 16**

Mamie Linn, Director of Communities in Action, testified in support of the bill. She represented a statewide network whose mission is to prevent and reduce high-risk youth behaviors such as tobacco use. She said they were involved with community education concerning tobacco accessibility with youth. The legislation is necessary to promote continued proactive change.

Robert Watson, student at Helena High School, testified in support of the bill. He said tobacco was one of the leading causes of death among adults in Montana caused by its easy access. Because of such easy access to tobacco and smokeless tobacco, many of Montana's youths are becoming addicted at an early age. The average age for addictions to tobacco products is 13.

Nancy Walker spoke in favor of the bill. She described her loss of family members due to lung cancer. She has vocal cord and neck cancer and was given two years to live. She began smoking at age 8 and at 13 and in earnest at 16. As a result of smoking, she breathes through her neck with a trachea. She has no sense of smell or taste. She has lost her husband to divorce and son, because they could not handle the circumstances of her life. Smoking affects the entire family.

{Tape: 2; Side: B; Approx. Counter: 000; Comments: n/a.}

Ms. Walker described the hardships she has experienced. Her son is 16 and smokes and is able to purchase cigarettes anywhere in Great Falls. She said her son thought he could just try smoking with his friends, but did not realize that he could not simply quit. **Ms. Walker** is the chairman and founder of the Vocal Cord Club in Great Falls, representing 39 members. She described financial problems with insurance companies which would not pay and left her $154,000 in debt.

SEN. STEVE BENEDICT, SD 30, spoke in favor of the bill. He pointed out that in order to preserve federal funding, the bill should be passed.

SEN. CHRIS CHRISTIAENS, SD 23, Cascade County, testified for the bill. He also serves on the Governor's Council for Chemical Dependency and they support the bill. The department is required to conduct tobacco surveys to insure compliance and reducing the availability of tobacco products. The effects of the use of tobacco are widely demonstrated.

Mona Jamison, American Lung Association, testified in support of the bill. She pointed out the current enforcement mechanism requires a county attorney to prosecute. This bill becomes an administrative mechanism rather than involving the county, county funds or county prosecutors. The Department of Corrections already has to do compliance checks under a federal grant in order to maintain funds. She described the fees and penalties in the bill. She pointed out this bill enables teens to participate in the administrative mechanism.

Jeff Siebert, student at Skyview High School in Billings, spoke in favor of the bill. He said that chewing tobacco among youth is socially acceptable. He estimated that 35-40% of students at Billings High School smoke regularly. He discussed his activities with the Montana Teen Institute where they visited Billings merchants and tried to buy tobacco products. About 60% of those merchants sold them tobacco products.

Jerry Loendorf, Montana Medical Association, testified in favor of the bill. He referenced the Weekly Reader, which is read in elementary school. It is owned by K-3 Communications, the unit of Crobert, Cravis and Roberts which is the largest shareholder of R.J.R. Nabisco, a cigarette manufacturer. A recent issue discussed smokers' rights and some of the difficulties the tobacco industry was having with regard to smoking restrictions. He pointed out the concern when there was no mention of the adverse affects from tobacco. This is an appeal to the young and a direct target of tobacco advertisers.

Robin Morris, Executive Director of Havre Encourages Long-range Prevention (HELP), spoke in favor of the bill. She pointed out that youth are getting conflicting messages. When tobacco products are against state law and not allowed by parents, merchants go ahead and provide them at $1.75 a pack.. **EXHIBIT 17**

Brenda Gross, special ed teacher and vocational advisor at Skyview High School and MTI leader, spoke about the importance of peer pressure and teens working together as a team.

David VanDermark, Billings, spoke on behalf of the 5,000 members of the American Cancer Society and urged the committee to pass the bill.

Rachael DeLong, student from Helena High School, said HB 539 would help reduce the ability to buy tobacco by her peers.

Bob Edwards, American Lung Association and the Montana Teen Institute in support of HB 539. He pointed out the degradation that occurs to students who begin smoking. **EXHIBIT 18**

Steve Shapiro, Montana Nurses Association, supported the bill.

Terry Curry, a retired smoker, said they need to give the same attention to tobacco sales and use as they give to alcohol abuse.

Connie Jungman, Executive Director of the Montana Dental Association representing 500 member dentists across the state, spoke in support of HB 539.

Marsha Armstrong, Department of Corrections and Human Services, supported the bill. **EXHIBIT 19**

Charlotte Maharg, supervisor in the **Department of Revenue** charged with the administration of this law, spoke in support of the bill because it clarifies in a better manner the enforcement of the statute.

Kerry Campbell, employed with the **American Lung Association,** spoke in support of the bill. She referred to an incident at a convenience store where the clerk did not agree with the law and therefore, would continue to sell tobacco products to minors. **EXHIBIT 20**

John McCrae, American Lung Association, said the bill would prevent these kinds of packets with the single cigarettes from entering the state. It would also prevent kids from accessing collectors cigarettes with the camel figure on the front.

John Schneider, respiratory therapist from Great Falls and representing the Montana Society for Respiratory Care, stood in support of the bill.

Vince Superell, a respiratory care practitioner, spoke in favor of the bill.

Mike Biggins, Director of Respiratory Services at Community Medical Center, supported the bill.

Kate Walsh, Deaconess Medical Center, Billings, supported the bill. She said she lost a husband to cancer.

{Tape: 2; Side: B; Approx. Counter: 600; Comments: n/a.}

Opponents' Testimony:

Jerome Anderson, an attorney from Helena and lobbyist for the tobacco industry since 1971, testified in opposition to the bill. He said he had a substantial history of all the legislation on the subject that has passed through the Legislature in the past. He said the tobacco industry fully and completely supports the proposition that tobacco products should not be sold or distributed to anyone under 18 years of age. The use of tobacco products should be an informed decision made by an adult. He discussed the historical aspects of the present law and the "18 year old" bill since 1989. He pointed out that there was resistance against overregulation on this issue. The present law has been in effect since October 1993. Sixteen months is not enough time to let that act work.

He believed the present act is adequate and provides for signage at the point of sale to the public, it prohibits sale to those under 18, it covers vending machines, requires cigarettes be sold in sealed packages, provides punishment, provides for enforcement at the local level, and provides for statewide uniformity of law.

He noted that Brad Griffin, the registered lobbyist for the Montana Retailers' Association, advised Mr. Anderson to tell the committee his association opposed the bill. The present act is not incapable of being enforced. He pointed out some provisions in the bill that were unclear and created a marketing and manufacturing problem. Also, any license suspension or revocations would require meetings with the Department of Corrections or Revenue taking place in Helena rather than in the town where the merchant is located. He objected to the education fee which is not necessary since the state receives federal money for this type of education activity.

{Tape: 3; Side: A; Approx. Counter: 000; Comments: n/a.}

Mr. Anderson said the bill on Section 6, line 30, page 4, removes state preemption. In 1993, the Legislature recognized the need for the development of the uniform law enforcement across the state. He explained if local entities are allowed to pass more restrictive legislation than the state act, there would be too much variation and chain stores operating in Montana would find it difficult to comply from place to place. He pointed out that the bill needed a fiscal note and should be held up until one is available. The bill does not have any reporting requirements to conform to federal acts.

Page Dringman, Philip Morris Tobacco Company, testified in opposition to the bill. She noted that she would need to see the

amendments before opposing the entire bill. She noted that there was an underlying premise that people should take responsibility for their actions and have the ability to make choices when it comes to tobacco consumption. She does not support the sale of tobacco products to minors. She addressed section 5, page 4, about the compliance requirements.

Although three dry runs with teenagers doing inspections with supervisors was talked about, her copy of the bill had the Department of Corrections and Human Services conducting compliance checks with the code sections directly or by contract or other means. She said this made it clear that the department had the authority. She asked if the provision would allow contracts with private advocacy groups or with individuals who were philosophically opposed to the use and sale of tobacco products. She said with some procedural safeguards relative to the use by minors she would not be opposed to the section. However, as it currently reads, the provisions should be narrowed and the enforcement authority specifically set forth. The rights of the licensee to protest the findings of violation are already severely curtailed under this bill. There is no recourse to Montana's administrative procedures act until after a fourth violation. She suggested this be clarified in the bill. The reliability of evidence should be ensured, such as the delegation of authority, plus law enforcement supervision as well as parental consent if minors are to be used in a sting operation.

She said that Philip Morris understands the concerns regarding youth access to tobacco products and they would potentially support this bill if there were procedural safeguards because they do realize that enforcement appears to be a problem.

Mark Staples, Montana Wholesale Distributors Association, testified in opposition to the bill. Just because there is a good philosophy, theory or morality does not mean the bill is necessary or can't be improved. He shared concerns about underage smoking and did not believe there is a conspiracy to encourage it. He said he also represented the Montana Tavern Association and has been involved from the "stingee" end. He discussed the sting operation.

He pointed out the bill's "three dry runs" were really a first offense as a dry run, the second offense which looks like a $500 fine, and the third offense is the suspension of the license. He noted that there did not appear to be an appeal route in the bill. He suggested there be more of an official interaction such as the 80% violations, which the county authorities should be willing to prosecute.

Larry Akey, Smokeless Tobacco Council, testified in opposition to the bill. He said the council believes that tobacco is an adult product and does not condone the use of its product by people under the age of 18. The bill appears to be a youth access bill, however, it should be workable for everyone. This is an example

of people trying to use youth access as an excuse for an expanded anti-tobacco agenda. He pointed out things that would make the bill better. The assessment conference should be in the retailers' home town should there be some standards of evidence or process for the assessment conference. The content of the tobacco education program should be defined. Conducting inspections by other means should be defined. The bill needs to be worked on.

John Delano said he supported the intent of the bill. He directed the committee to open some packets called "It's the Law." The program and folder is from Colorado. He explained that Philip Morris has been putting out these materials for some time. **EXHIBIT 21**

Questions from Committee Members and Responses:

REP. SIMON asked **REP. SOFT** about the amendments on Page 2, line 13, and what the penalties would be for failure to post signs. **Ms. Jamison** replied that if someone failed to post signs as required by the statute they would just get a notice of violation that would not proceed to the education assessment fee or to license suspension. She clarified that a cigarette license is necessary in order to sell cigarettes which is the Department of Revenue's business. The penalty for failure to post the sign is a notice of violation and it is based on the integrity of the merchant. **EXHIBIT 22**

REP. SIMON said that under current law, failure to post a sign is punishable by $100. Striking that language would remove that requirement and reduce that leverage to a simple warning from the department. **Ms. Jamison** replied that this needed to be fair to the merchant. **REP. SIMON** said the remaining violations refer to 16-11-305, but he was referring to 16-11-304 which is already current language.

REP. SIMON noted that this bill had two departments mixed in. **Ms. Jamison** discussed the federal grant that was in place for tobacco education so the Department of Corrections is involved, however, if it is the third time around under law it is the Department of Revenue that can issue and suspend cigarette licenses.

{Tape: 3; Side: B; Approx. Counter: 000; Comments: n/a.}

REP. SIMON said that the bill would put a burden on people that own a multiple of facilities. **Ms. Jamison** said that if the owner is not responsible for the employees, then they would encourage and facilitate sales to minors. She said the structure is extremely generous to the employer in giving them six opportunities to correct the situation.

REP. BOHLINGER asked about the appeals process. **Ms. Jamison** replied that the due process issue in Section 1 of the bill, line

18, is the provision which provides administrative hearing for revocation of the license. Page 4, lines 3-10, deal with the violation and referral for suspension of license is pursuant to 16-11-144. She pointed out that the assessment process is informal, but is a way of letting people make their case without hiring lawyers. It provides for a written and tape recorded record which is due process.

REP. BOHLINGER asked **Mr. Anderson** to comment about the due process in the document. **Mr. Anderson** said that due process is violated in this bill. Part of the bill on page 3, lines 14-21, addresses the assessment and collection of the tobacco education fee. That fee is $500 dollars. The assessment conference is held and this is not a contested case as defined in the Montana Administrative Procedure Act which takes away the right of appeal and due process. The license suspension proceeding under subsection 8, lines 22-26 on page 3, is a proceeding to determine whether or not the license should be suspended, whether a property right should be taken away and whether the person should be prevented from engaging in a lawful occupation. The last sentence in that provision said it is not subject to administrative or judicial appeal pursuant to the Montana Administrative Procedure Act.

Closing by the Sponsor:

REP. SOFT closed on the bill. He said the present law has not been enforced and is not adequate.

HEARING ON HB 509

Opening Statement by Sponsor:

REP. SHIELL ANDERSON said HB 509 was intended to make health care more affordable to Montanans. He explained this bill would authorize mergers and consolidations of health care facilities and if they could prove that they can consolidate and not increase health care costs, then the Health Care Authority could give them a certificate of public advantage which will prevent them from being the subject of anti-trust litigation. He passed out amendments to the bill. **EXHIBIT 23**

This would make the program self-funding where the mergers or consolidators would pay for the authority to review their application for certificate of public advantage as well as on-going costs for follow-up of compliance in terms of that agreement. The amendments should eliminate the need for any fiscal notes. The coordinating functions will go to the Attorney General's Office rather than the Health Care Authority. This will help hospitals merge if they want to without being subjected to anti-trust litigation. This process will help them better serve the public.

REP. SQUIRES noted that this was for a pilot for 50 people so it would not include everybody.

{Tape: 6; Side: B; Approx. Counter: 000; Comments: n/a.}

Vote: **The question was called. The motion carried 15-1 with REP. SQUIRES voting no.**

EXECUTIVE ACTION ON HB 539

Motion: **REP. SOFT MOVED THAT HB 539 DO PASS.**

Discussion: **REP. SOFT** presented amendments. He asked **Ms. Mona Jamison** to explain the amendments.

Motion: **REP. SOFT MOVED THE AMENDMENTS.**

Discussion:

Ms. Jamison said the amendments would help clarify the bill. She said that single cigarettes should not be sold. The amendment #12 addresses the due process portion. If the assessment fee is challenged, then it would be a contested case under the Administrative Procedure Act. This is a concern. Then it becomes a matter of philosophy. Amendment #5 on the dry runs, the first through third offense, is punishable by a verbal notification.

Vote: **The question was called on the amendment. The motion to adopt the Soft amendment carried.**

Discussion:

REP. SIMON presented an amendment to restore language on page 3, line 9, subsection (4). He pointed out if the merchant has a program in place and have told their employees not to do this, they should not be punished if some clerk ignores their directives and sells to minors. He moved the amendment.

Mr. Niss said there was no civil penalty under subsection (2) but was a penalty for failure to obtain a license. He spoke against the amendment.

REP. GREEN also spoke against the amendment since he felt it would take the heart out of it.

REP. KOTTEL spoke against the bill since there were three warnings that take place prior to any government action.

REP. WENNEMAR spoke against the amendment.

Vote: **The question was called on the Simon amendment. The motion failed.**

Vote: The question was called on the bill. The motion carried 15-1.

EXECUTIVE ACTION ON HB 532

Motion: REP. BOHLINGER MOVED THAT HB 532 DO PASS.

Discussion:

REP. KOTTEL said she was confused with this bill. She explained that she had worked in the state mental hospital and thought she was doing a good thing. She witnessed a "least restrictive alternative" in a Chicago "mental health ghetto" where people lived on the streets and had nothing in place to help the people. The mentally ill were preyed upon by others.

She pointed out page 2, lines 7-30, subsection (b), each of those is an independent clause, so if someone has a behavior that creates serious difficulty in providing for basic personal needs or protecting the person's life or health needed for health or safety and any of these things treatable with a reasonable prospect of success consistent with least restrictive course of treatment. She noted that a person need not even have a previous involuntary civil commitment, yet this bill would allow the involuntary medication of people on the street.

CHAIRMAN GRIMES asked if she had a copy of the amendment presented by the Mental Health Association. The committee discussed the amendment.

{Tape: 6; Side: B; Approx. Counter: 340; Comments: n/a.}

She replied that if the Mental Health Association rules were accepted, then it would allow taking care of the transient issue with no known medical history. However, it would provide no due process other than a written verification by a physician who does not even attend the hearing.

Motion: REP. HAGENER MOVED THE AMENDMENT.

Discussion:

CHAIRMAN GRIMES asked **Mr. Niss** to respond to **REP. KOTTEL'S** concerns.

REP. GREEN commented that this amendment would be too intrusive.

Mr. Niss explained that it did not appear to deal with transients. For example, being "treatable with a prospect of success" could not be known about a transient.

Motion/Vote: REP. HAGENER MOVED TO TABLE HB 532. The motion to carried 14-2 on a roll call vote.

HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Mr. Speaker: We, the committee on **Human Services and Aging** report that **House Bill 539** (first reading copy -- white) **do pass as amended.**

Signed: *Duane Grimes, Chair*

And, that such amendments read:

1. Title, lines 7 and 8.
Following: line 6
Strike: lines 7 through "CIGARETTES;" on line 8
Insert: "PROHIBITING THE SALE OF SINGLE CIGARETTES;"

2. Page 2, lines 8 and 9.
Following: "law." on line 8
Strike: remainder of line 8 thorough "package." on line 9
Insert: "Single cigarettes may not be sold."

3. Page 2, line 13.
Following: "$100."
Insert: "The department may collect the penalty in the manner provided for the collection of other debts."

4. Page 2, line 14.
Following: "16-11-305(1)"
Insert: "or 16-11-307"

5. Page 2, line 19.
Following: line 18
Insert: "(a) A first through third offense is punishable by a verbal notification of violation."
Renumber: subsequent subsections

6. Page 2, line 19.

Committee Vote:
Yes 15, No 1.

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Strike: "first"
Insert: "fourth"

7. Page 2, line 21.
Strike: "second"
Insert: "fifth"

8. Page 2, line 25.
Strike: "third"
Insert: "sixth"

9. Page 2, line 27.
Strike: "fourth"
Insert: "seventh"

10. Page 2, lines 29 and 30.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

11. Page 3, line 3.
Strike: "(1)(c)"
Insert: "(2)(d)"
Strike: "(1)(d)"
Insert: "(2)(e)"

12. Page 3, lines 17 through 21.
Following: "notice" on line 17
Strike: remainder of line 17 through "records" on line 21
Insert: "of assessment must provide an opportunity for a hearing pursuant to the provisions of the Montana administrative procedure act. Within 30 days from the date the notice of assessment was mailed, the owner or manager shall notify the department of corrections and human services that the owner or manager objects to the assessment and request a hearing pursuant to this section"

13. Page 3, line 22.
Strike: "subsection (8)"
Insert: "subsections (2)(d) and (2)(e)"

14. Page 3, lines 22 through 26.
Following: "determination" on line 22
Strike: remainder of line 22 through "Act" on line 26
Insert: "issued under subsection (6) that a person has violated 16-11-305(1) or 16-11-307, shall not be reheard by the department"

15. Page 4, line 3.
Strike: "fourth"
Insert: "sixth"

16. Page 4, line 5.
Following: "alleged"
Strike: "fourth"

17. Page 4, line 9.
Following: "proceedings, the"
Strike: "fourth"

18. Page 4, line 22.
Following: "contract"
Strike: "or by other means"

19. Page 4, line 27.
Strike: "16-11-306,"

-END-

EXHIBIT 15
DATE 2/15/95
HB 539

Part 3
Youth Access to Tobacco Products Control Act

16-11-301. Short title. This part may be cited as the "Youth Access to Tobacco Products Control Act".

History: En. Sec. 1, Ch. 569, L. 1993.

16-11-302. Definitions. For the purposes of 16-11-301 through 16-11-308, the following definitions apply:

(1) "Distribute" means:

(a) to give, deliver, sample, or sell;

(b) to offer to give, deliver, sample, or sell; or

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

(2) "Health warning" means a tobacco product label required by federal law and intended to alert users of the product to the health risks associated with tobacco use. The term includes warning labels required under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986.

(3) "License" means a retail tobacco product sales license.

(4) "Person" means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

(5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

History: En. Sec. 2, Ch. 569, L. 1993.

16-11-303. License for retail sale of tobacco products. (1) A person may not sell tobacco products at retail, whether over the counter, by vending machine, or otherwise, without a license obtained from the department of revenue.

(2) A license for the retail sale of tobacco products may be obtained from the department of revenue.

(3) The fee collected by the department must be deposited in the general fund.

History: En. Sec. 3, Ch. 569, L. 1993.

16-11-304. Signs. A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to persons under 18 years of age."

History: En. Sec. 4, Ch. 569, L. 1993.

16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited. (1) A person may not sell or distribute a tobacco product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual.

History: En. Sec. 5, Ch. 569, L. 1993.

16-11-306. Sales from tobacco vending machines. Tobacco products may be sold through a vending machine only in:

(1) factories, businesses, offices, and other places not open to the general public;

(2) places to which individuals under 18 years of age are not permitted access;

(3) places where alcoholic beverages are sold and consumed on the premises; and

(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person for purposes of 16-11-305.

History: En. Sec. 6, Ch. 569, L. 1993.

16-11-307. Distribution of tobacco products in other than sealed packages prohibited. A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law.

History: En. Sec. 7, Ch. 569, L. 1993.

16-11-308. Penalties. (1) Failure to obtain a license as required by 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of $100.

(2) A person who violates 16-11-305(1) may be punished by a civil penalty of $100. A subsequent violation within 1 year is punishable by a civil penalty of $200. A third violation is punishable by a civil penalty of $300 if two violations occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.

(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than $100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than $200. A third or subsequent violation is punishable by a civil penalty of not more than $500.

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of 16-11-305(1).

(5) The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty.

History: En. Sec. 8, Ch. 569, L. 1993.

16-11-309 and 16-11-310 reserved.

16-11-311. Local regulations. A local government may by ordinance adopt regulations on the subjects of 16-11-301 through 16-11-308 that are no more stringent than 16-11-301 through 16-11-308.

16-11-312. Rulemaking authority. The department of revenue may adopt rules to implement 16-11-301 through 16-11-308.

History: En. Sec. 11, Ch. 569, L. 1993.

EXHIBIT 15
DATE 2-15-95
HB 539

EXHIBIT 16
DATE 2/15/95
HB 539

Testimony - HB539
Casey J. McKinney, 15
1015 14th Avenue, Havre, MT 59501
1-406-265-5923

Wednesday, 2/15/95, State Capitol, Room 104, 3:00 p.m.

Mr. Chairperson, Committee members, Good Afternoon. I am Casey McKinney, a Freshman at Havre High School, and I am here to support House Bill 539. I became involved in prevention when McGruff taught me about how my body could become dependent on something that could end up harming me, give me smelly breath and burn holes in my clothes -- I was 7 years old. I have volunteered ever since, as a youth leader during HELP Camp, by remaining involved in school prevention organizations, and by choosing to live a healthy lifestyle. Recently I participated in a Youth Tobacco Access Survey. I, along with my peers, was able to purchase tobacco products over 50% of the time from merchants. At the same time we were able to purchase 100% of the time from vending machines. One of the females that participated in the survey was told by a male merchant that she was so cute he would knock 25 cents off the price of the cigarettes! The youth that participated in this survey were 14 and 15 years old! Just this past week I learned of a young male, who I know personally, that was introduced to tobacco by a slightly older peer -- he is only 8 years old. So you see the current youth access laws simply are not working. To remedy this situation I urge you to support House Bill 539, which will place the point of purchase responsibility on those licensed to sell tobacco products.

EXHIBIT 11
DATE 2/15/95
HB 539

Testimony - HB539

Robin E. Morris, Executive Director
Havre Encourages Long-range Prevention (HELP)
Post Office Box 68, Havre, MT 59501
1-406-265-6206

Wednesday, 2/15/95, State Capitol, Room 104, 3:00 p.m.

HONORABLE CHAIRMAN GRIMES

Mr. Chairperson, Committee members, Good Afternoon. My name is Robin Morris, and I am the Executive Director for Havre Encourages Long-range Prevention. HELP A not-for-profit community-based organization with a 15 year history in alcohol, tobacco and other drug abuse prevention. I have personally been with the H.E.L.P. Committee since 1987. In addition I have had the pleasure of working on prevention at the state level as an appointee to the Governors Interagency Coordinating Council for Prevention Programs, as a Board member for Montana Communities in Action, and as a member of the State Tobacco Coalition.It is an exciting time for prevention...especially in the tobacco field. It is common sense, that if we limit the opportunity for individuals to smoke in public that the number of smokers will decrease. I celebrate with the restaurants, the schools, the public office buildings, and the private employers that have said no more tobacco! However, limiting the opportunities for public tobacco consumption is only half of the solution...the other half involves youth access to tobacco! According to the latest surgeon general's report on smoking and health --adolescence is the most crucial stage in life for preventing tobacco use. The majority of first use of tobacco occurs before age 18. In Montana, the median age for first use of cigarettes is 13 years of age *(Drug Abuse Update, Fall 1994 abstracted)*. I sincerely believe that the key to a healthy lifestyle for these adolescents is abstinence from the illicit use of tobacco, alcohol and other drugs. Tobacco is one of the three "gateway substances" that statistics relate to use of "harder" drugs (as reported by the Center on Addiction and Substance Abuse at Columbia University). Although many adult and youth members from the hi-line in North Central Montana have been working to educate merchants and the public at large about the current tobacco laws, youth are

working to educate merchants and the public at large about the current tobacco laws, youth are still able to purchase tobacco products with the cooperation of 50% of the merchants in our area. This was reinforced during a recent tobacco access survey conducted in Havre. In addition, we learned that several merchants were selling tobacco products, without a state tobacco license to do so, and that the majority of merchants with tobacco vending machines had them placed where they could not be monitored. One unmonitored vending machine sold tobacco, candy, gum and potato chips --all in the same machine! As a result of merchant miscooperation our youth are receiving conflicting messages --Mom & Dad, and the law, state it is illegal and unhealthy for them to purchase and consume tobacco products --yet, Joe Merchant says that will be $1.75. Somewhere along the line, the merchants need to be held accountable! In order for a youth access law to work we will all need to work together. I am not anti-business, but rather anti-youth access to tobacco. The Tobacco Industry has stated that they have no interest or master plan to sell to minors, so lets all get together and support HB539 --that places the responsibility on those issued a license for the sale of tobacco products.

HB. 539

EXHIBIT 18
DATE 2/15/95
HB 539

Ladies and Gentlemen, my name is Bob Edwards and I am here on behalf of The American Lung Association, Montana Teen Institute, and my peers. I would like to see a crackdown on tobacco use by minors. I feel that ~~if this~~ HB 539 bill is past, this dream which I share with many others can be achieved.

Last year I had a friend who had grades above that of the average student. She was in many clubs and participated in many activities. She was fun to be around and had a great outlook on life. This year that very same student has changed dramatically from last year. Her grades have plummeted, she skips classes and her standard of friends has dropped. She comes to school on occasion when she is not skipping with her friends. She comes to school as many others do telling of how she got drunk and how she got a buzz from smoking cigarettes. Her parents do not care that she smokes and in fact they buy cigarettes for her.

Occasionally, while walking down the halls at Helena High you can smell the smoke of the students who smoke in the restrooms. Many students who use tobacco products and our caught are sent to the administrators. The administrators then tell them to be careful were the use it because they could get in trouble. When someone is told this by one of the administrators they should get a clue that there is a problem.

It is not just cigarettes either. Chewing tobacco is a major problem to. Chewing tobacco is heavily used. Students at Helena High can be seen with a can of tobacco in thier pockets or with a chew in thier mouth. Many of the teachers at Helena High don't

even care if students use chewing tobacco in thier classes. I personally find that shocking.

A guy I know has been chewing for many years now. Not long ago he went to the dentist where he was informed that the beginnings of cancer were in his lip. This can and most likely will happen to all of the tobacco users who are not able to quit.

The average age for Montanans to start smoking is 13. In November The Montana Teen Institute in cooperation with the American Lung Association conducted a tobacco accessibility survey to find out if tobacco products could easily be bought by minors. The tobacco Accessibility Survey showed that at almost 100% of the stores in Helena we were able to buy tobacco products.

The average age of the first use of chewing tobacco is 10 years old. Smoking is responsible for one in every five deaths in Montana. More people in Montana die of tobacco use than cancer, Heart disease, AIDS, drug and alcohol abuse, suicide, fire, and homicide combined. Montana adult chewing tobacco usage is twice the national average.

I feel that if this bill is passed that these statistics our educations will be bettered without the distractions of tobacco being used. I would like to thank you for your time and I encourage you to vote in our bill.

EXHIBIT 19
DATE 2/15/95
HB 539

Good afternoon, Chairman Grimes and committee members I am with the Department of Corrections and Human Services, Alcohol and Drug Abuse Division. We are involved with HB 539 for the following reasons:

The Department of Corrections and Human Services has the statutory responsibility to assist all interested public agencies and private organizations in providing education for the prevention of alcohol and other drugs.

We are required by our federal funding to monitor and report on compliance checks to ensure compliance with the youth accessibility law.

We will provide intensive training to the youth under parental supervision and permission before the youth are involved in any surveys. The youth sign a confidentiality statement that the merchant's name will not be made available. As you have heard there are three dry runs before any punitive measures are given. You can see that this is truly an education bill not a punitive bill.

Respectively Submitted,

Marcia Armstrong

Marcia Armstrong

Alcohol and Drug Abuse Division

EXHIBIT 20
DATE 2/15/95
HB 539

Mr. Chairman and members of the committee, my name is Kerry Campbell, I am employed with The American Lung Association. I would appreciate you pass H.B. 539 for the following reason: On February 2, 1995 I stopped at a local Convenience Store in Helena. While waiting in line to pay for my gasoline, I noticed a young boy complaining to his friend that they he would have to settle for SKOAL again because Convenience Store was out of COPENHAGEN. I noticed that the chewing tobacco shelf was displayed in an area such that anyone could easily help themselves. As I waited in line, I looked closely at the boys and decided they were both still young high school students. I also noticed 2 signs that state that Montana Law Prohibits the Sale of Tobacco Products to Persons Under the Age of 18 hanging at the check-out register. The signs were displayed for the customers convenience. I wondered if the clerk would ask for I.D. He did not. The boys left with their chewing tobacco.

I asked the clerk, a young male I'd guess to be in his mid 20's, "Don't you ever card those kids when they buy tobacco?" He informed me that is was "stupid" and that No, he never did (ask for ID).

I pointed to the 2 signs at the counter and informed him that it was against the law to sell tobacco to a minor. Once again, he informed my that it was "stupid" and that if he didn't sell it to them, they'd just go elsewhere to buy it.

At that point, I told him that I worked for the American Lung Association and that we were in the process of making the law stricter on people who did sell to minors. I asked him if his boss would appreciate him selling tobacco to under aged kids.

His final response was that the law was "stupid" and that kids can get tobacco anywhere.

We need to educate merchants on the law and to assure that clerks do not sell tobacco products to youth under the age of 18. H.B. 539 will provide that opportunity. I ask that as a parent with two children, that you pass this bill.

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 21
DATE 2/15/95
HB 539

PROGRAM SUMMARY:
A Tobacco Product Retailing Program for Retail/Vending Industries

Objectives

- To continue to discourage those who are underage from purchasing tobacco products.
- To reaffirm that the tobacco industry does not want young people to use tobacco products -- and continues to take affirmative steps to reinforce this position.

Theme

The theme of the campaign, which will be incorporated into all program materials, is as follows:

IT'S THE LAW;
WE DO NOT SELL TOBACCO PRODUCTS
TO PERSONS UNDER 18
(OR 19, IF THE STATE LAW DESIGNATES 19 AS THE MINIMUM AGE)

Program Materials

We have designed a package of print and display materials for use by the tobacco product retailer. Materials include:

- A state-specific brochure describing the program and applicable laws. The brochure, in addition to detailing minimum age laws for a state and penalties for violation, provides tips to the retailer and the employee on verification of age, acceptable forms of identification, and how to deal with a customer who becomes upset when asked for identification. The brochure includes a tip sheet on how to verify age, for display at the cash register as a reminder when employees prepare to ring up a sale.
- Storefront and window display signs and point-of-purchase materials, all bearing the program theme: "It's the Law: We do not sell tobacco products to persons under 18." These colorful blue, orange and white signs and decals will assist store owners in reminding employees and customers of the state law and their compliance with it.
- Employee Acknowledgement Form.

Materials are available only in states where the minimum age for purchase of cigarettes is 18 or 19.

EXHIBIT 22
DATE 2/15/95
HB 539

House Human Services & Aging Commmittee
House Bill 539
Sponsor's Amendments

1. Page 2, line 13
Following: "16-11-303"
Delete: "or to post signs as provided in 16-11-304"

Following: "$100."
Insert: "The Department may collect the penalty in the manner provided for the collection of other tax debts."

2. Page 2, line 14
Following: "16-11-305(1)"
Insert: "and 16-11-307"

3. Page 2, line 29
Following: line 28
Delete: lines 29 and 30 in their entirety

4. Page 3, line 22
Following: "subsection"
Delete: "(8)"
Insert: "(2)(c) and (d)"

5. Page 3, line 23
Following: "requirements of"
Delete: "16-11-304"

6. Page 4, line 3
Following: "Upon the "
Delete: "fourth"
Insert: "third"

Page 4, line 5
Following: "alleged"
Delete: "fourth"

Page 4, line 9
Followiing: "proceedings, the"
Delete: "fourth"

7. Page 4, line 27
Following: "16-11-305,"
Delete: "16-11-306"

enda NO. 13 #1

HOUSE OF REPRESENTATIVES
54TH LEGISLATURE

Human Services & Aging COMMITTEE

HB-539

WITNESS STATEMENT

Please Print

NAME Terry Carey BUDGET _____

ADDRESS 5362 N. Mt. Helena MT. DATE 2-15-95

WHOM DO YOU REPRESENT? _____

SUPPORT ✓ OPPOSE _____ AMEND _____

COMMENTS:

Access to tobacco dispersion needs to be given similar restrictions already mandated for alcohol sales, Tobacco products are responsible in Contributing to more health problems resulting in death compared to most legal and illegal drug substances. Our youth must make educated decisions, Our Vendors must take responsibility. I support HB 539, my only wish is that it would have even stronger penalties for violation.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services & Aging DATE 2/15/95

BILL NO. 539 SPONSOR(S) Sept

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mona Jamison	American Lung Assn	✓	
Darryl Bruno	DCHS - ADAD	✓	
Steve Yeakel	MT Council for Maternal & Child Health	✓	
RICHARD L. BENDER	NO SNUFF	✓	
Jeff Seibert	Skyview MTI	✓	
BRENDA Gross	Skyview High MTI	✓	
Rachael DeLong	Helena High MTI	✓	
Terry Cary	American Lung Assoc	✓	
Kerry Campbell	American Lung Assoc	X	
Cindy Hayden	American Lung Assn.	X	
Mamie Hunt	MT Communities in Action	X	
ROBIN MORRIS - HAVRE	H.E.L.P. COMMITTEE	✓	
Casey McKinney - Havre	Havre youth tobacco alliance	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services & Aging DATE 2/15/95

BILL NO. 539 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Chas Mahaffey	DOR	✓ with amendments	
Kim Solomon	Hill County Sheriff	✓	
LARRY AKEY	SMOKELESS TOBACCO COUNCIL		✓
KATE WELCH	Deaconess Medical Center	✓	
Vince Lapowell 1804 Lake N. GT. Falls	Montana Deaconess	✓	
John Fenner 1 GT. FALLS	" "	✓	
Milly Gutkoski Bozeman	self and MNA	✓	
Peggy Mussehl Boz	MSU Tobacco Cessation Program	✓	
Pat Donovan	Philip Morris		X
JOHN DELANO	" "		+
Jerome Lacunduff	mt. Med Assn	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Human Services & Aging — DATE 2/15/95

BILL NO. 539 SPONSOR(S) Sapt

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Connie Jungmann	MT Dental Assn	✓	
Nancy Wallace	Voice Against Smoking	✓	
JEROME ANDERSON	THE TOBACCO INSTITUTE		✓
Rachael DeLong	Student HHS MTI	✓	
Robert Watson	Student HHS MTI	✓	
Bill Riley	self	✓	
Jennifer Brannon	Helena High MTI	✓	
Jenny Watson	MTI	✓	
Stan Shapiro	MT Nurses Assn	✓	
Olivia Alexander	American Lung Assoc.	✓	
David M. VanDemark	American Cancer Society	✓	
Marcia Armstrong	Corrections & Human Services	✓	
John McCrea	American Lung Assoc	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By **CHAIRMAN JIM BURNETT**, on March 13,.1995, at 3:15 PM.

ROLL CALL

Members Present:
Sen. James H. "Jim" Burnett, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Mike Sprague (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Terry Klampe (D)

Members Excused: Sen. Arnie A. Mohl (R)

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Karolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 539, HB 504, HB 557
Executive Action: None

{Tape: 1; Side: 1}

HEARING ON HB 539

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, passed out a technical amendment to HB 539 requested by the Department of Revenue. **EXHIBIT 1.** He read the current youth access to tobacco products statute (16-11-305). He said a person who violates the statute may be punished by a civil penalty of $100.00, a second violation within one year is a civil penalty of $200.00, a third violation is a civil penalty of $300.00 if 2 violations occurred in the 2-year period prior to the violation, a fourth violation is a civil penalty of $500.00 if 3 or more violations occurred within the 2-year period prior to the violation. He said this has not been enforced anytime in the last 2 years since it was instituted because it was a good bill, but had not teeth for enforcement.

He said there are 434,000 annual deaths from smoking which are more deaths than those from alcohol, car accidents, fires, AIDS, drugs, suicides, homicides, etc. 75% of those who use tobacco start using before age 18. The National Institute on Drug Abuse states tobacco is a gateway drug for illicit drug use. Each year, more than 1 million young people will begin smoking. Three million under 18 years of age will consume 947 million packs of cigarettes and 56 million containers of smokeless tobacco, which amounts to $1.26 billion in illegal tobacco product sales annually to kids. Because of the Federal mandate, all states ban the sale of tobacco products to minors, but it isn't working.

He said this is a health care bill and quoted some figures from the Department of SRS. In 1993, the cost to Medicaid in Montana was over $10 million for smoking-related illnesses for all ages. HB 539 is an education and compliance bill, which includes community involvement and empowerment. Because kids are involved, there is positive peer model input into the process. The Montana Teen Institute was established to develop tomorrows leaders who wanted to help stop minors from getting involved in tobacco and other drugs.

He said this is a companion bill to HB 457, and described the parts of HB 539, what the bill will do, and the amendment.

Proponents' Testimony:

Rick Bender, Roundup, said 6 years ago he was diagnosed with oral cancer because of his use of smokeless tobacco. He started using it at age 12, and used it for 14 years before the diagnosis of cancer. He said he fell victim of and believed all of the advertising by sports celebrities, and at that time, it was not illegal to sell tobacco products to anyone under 18 years of age. Had there been a law at that time, he may not have started using tobacco products. He said the medical expenses for his cancer treatment was $107,000, driving him to bankruptsy. He lost his house and a lot of the toys he had accumulated. He told of emotional problems his family has gone through during this time. He strongly supports the passage of HB 539 and getting teens involved.

Jennifer Brannon, Leader of Helena High School MTI, spoke from her written testimony. **EXHIBIT 2.** She quoted some of the figures from a survey her group had conducted in Helena regarding the purchase of tobacco products by children under 18 years of age. She showed how many packs of cigarettes her group was able to easily purchase in Helena.

Tim Solomon, Sheriff, Hill County, said the current law is not effective because the lack of enforcement and funding for officers to enforce the law. He spoke in favor of HB 539 because teens will be helping with the enforcement and the Department of Corrections has offered help.

Nancy Walker spoke with an Artificial Larynx (a mechanical voice amplifier) saying at age 8 she tried cigarettes for the first

time, fooled around with cigarettes at age 13, and was smoking in ernest at age 16. Her entire family smokes. In 1989, she was diagnosed with oral, vocal cord and neck cancer, and had to have her vocal cords removed in an 8-hour surgery. Both her father and grandfather died of cancer, her mother died of stroked related to addiction, and she lost her fiance to a smoking-related death. She said she can't do anything about those who have passed away or anything for herself, but she wants to help young people by speaking to groups about the life-threatening dangers of smoking. She has a 16-year old son who smokes, and has had no trouble buying cigarettes in Great Falls. She urged passage of HB 539.

Gina Buss, Skyview High School, Billings, said students shouldn't be able to smoke and they pass the fumes onto non-smoking students. In the survey she did, 75% of the cigarettes she tried to purchase were sold to her.

Christy Young, Program Coordinator and Youth Advisor, Health Committee, a Havre-based prevention organization, said they support HB 539. The group did a survey in Havre and their purchase rate for cigarettes was 50% from stores and 100% from vending machines. They were 13 and 15-year olds, not 17-year olds who did the purchasing.

Barbara Booher, representing the Montana Nurses Association, said the Association fully supports HB 539 and urged its passage.

Beta Lovitt, representing the Montana Medical Association, spoke briefly in support of HB 539. She said this is an important health care bill and urged its passage.

Evangelina Duke, Billings, said she is 10 years old and in the 6th grade. She said she is not impressed by those who smoke and those who think they will fit in if they smoke are wrong. It is not necessary to smoke or take drugs to be popular.

Holly Cummings, Missoula, said she works with Missoula merchants in tobacco and alcohol sale training, and they would like to be educated about tobacco sale laws before any fines are imposed. She urged the passage of HB 539.

Rachael Long, Helena High School, related some personal experiences with family members who smoke. She said she has asthma and can't visit her grandmother because she smokes. She urged the Committee's support of the bill.

Brenda Shalman, MTI Advisor, Sykview High School, Billings, said read her written testimony in support HB 539. **EXHIBIT 3.**

Charles Brooks, representing Bill Stevens and the Montana Food Distributors Association, said he is a former chief operating officer of 5 large retail stores in the State. He has not used tobacco since he was a youth. He said the retailers are concerned about the ease with which teenagers are able to purchase tobacco

products, and before there were laws restricting tobacco sales to minors, he had very strict rules for his stores about the sales because he felt very strongly about the issue. He said HB 539 is an appropriate approach to this problem, and the statistics given show there is a major problem. He said they support the amendment to place a penalty on the clerk who sells tobacco to youth, and they support the bill as amended. **EXHIBIT 4.**

Mary McCue, representing the Montana Dental Association, said tobacco use is a significant issue for the Dental Association. They support HB 539 and always will support legislation regarding the education of people about tobacco addiction.

Kerry Campbell, American Lung Association, spoke in support of HB 539. She said she had seen 2 teens purchase tobacco products in Helena, and when she questioned the clerk, the clerk said the law against tobacco sales is stupid and if he didn't sell it to them, they would go elsewhere and buy it. She said merchants need to be educated about the law and assure that clerks do not sell tobacco products to youth under 18 years of age.

John McCray, American Lung Association, said they support HB 539.

Mamie Flinn, Director, Montana Communities in Action, a State-wide non-profit organization, said their organization assists communities in developing programs aimed at reducing high risk youth behaviors, such as tobacco use. They strongly support this Legislation.

Marsha Armstrong, Department of Corrections and Human Services, said they support HB 539. They encourage prevention and see HB 539 as a prevention component. **EXHIBIT 4.**

Charlotte Maharg, Supervisor, Business Tax area, Department of Revenue, said they support HB 539 with the amendments because it provides a defined mechanism for lines of responsibility to enforce the law. She said the current law is unclear and is practically unenforceable.

Jenny Watson, a Helena High School Junior, said HB 539 needs to be passed for her generation and future generations. She said it is easy for youth to purchase tobacco products.

Steve Yeakel, representing Montana Council Maternal and Child Health, said HB 539 is a big part of the Montana Children's agenda and strongly support its passage.

Robert Watson, a Helena High school Sophomore, said he is in favor of HB 539. He spoke of the health risks of using tobacco products.

Stephanie Quayle, Bozeman High School Freshman, said she has seen her friends easily buy tobacco products, and supports the passage of HB 539.

Bill Devine, Community and Program Coordinator, Center for Adolescent Development, said it provides the technical training for the Montana Teen Institute and Teens in Partnership. He said there are thousands of Montana youth who support the passage of HB 539.

Mona Jamison, representing American Lung Association of Montana, said this bill has nothing to do with adults exercising their choice to smoke if they so choose, but is only addressing minors, under 18 years of age. They support the amendment offered. She said the Tobacco Institute and Phillip Morris (**EXHIBIT 5**) fully support this bill as amended and urged the Committee's support. She said the existing enforcement mechanism, which relies on prosecution by the County Attorney, does not work. This bill puts in place an enforcement mechanism that is more realistic and emphasizes education, both to the owner of the establishment and the clerk who sells the product. The owner has a number of chances to understand the nature of the statute, what the violations are, and the importance of compliance. They believe the amendments will give a realistic statute and enable the law currently on the books to actually work. **EXHIBIT 6.**

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR MOHL asked how it can be controlled where teenagers may be selling tobacco products in retail establishments.

Mona Jamison said the amendment imposes a $25.00 fee against the clerk who sold tobacco products to anyone under 18 years of age, regardless the age of the clerk. With this, the owner of the store is not the only who bears the responsibility.

SENATOR MOHL asked if teenagers will be allowed to sell tobacco products.

Mona Jamison said yes. That way there would be no interference with business practices if the age of the seller is not mandated.

SENATOR BENEDICT asked for clarification of which amendment is being referred to, the long (**EXHIBIT 6**) which has been accepted by the Sponsor and others, or the short amendment (**EXHIBIT 1**), and if the long amendment is not passed then the short amendment needs to be passed.

Mona Jamison said the long amendment takes place of the short amendment.

SENATOR SPRAGUE said he has a problem with the bill because it doesn't penalize the student for trying to buy tobacco products. In the past when a minor was caught buying alcohol or tobacco products they were punished, but now buying seems to be everyone else's problem why a child bought the cigarettes, or is tempting

the law or his masculinity. Why doesn't this bill address the child who is defying the law.

REP. SOFT said they wanted to focus on the education and health aspects. Even though the minor is in violation of the law, they wanted to hold the deterrence on the purchase of the product, and let the store owners know what violations of the law entails.

SENATOR SPRAGUE said, as he reads the bill, it's a cumulative effort on the store. Assuming the store owner isn't in the store 24 hours a day, then he has to delegate responsibility to the employees. He asked if this is a cumulative amount of citations, and if a store that has been in business for a short time is better off than one that has been in business a long time.

REP. SOFT deferred to **Mona Jamison,** and that was one of the reasons for the amendment to assess the clerk for illegally selling tobacco products. The clerk is assessed $25.00, but it also sends a message to the store owner to talk with the clerk about the violation of the law.

Mona Jamison referred to page 3, lines 8 and 9. They added a section that specifically addresses this concern. Two years from the first violation, if there are no further violations, then a violation at that point is considered a first. She referred to another bill that was on 3rd reading which addresses the possession of tobacco products by minors.

SENATOR SPRAGUE said laws have been on the books that minors could not buy cigarettes and law enforcement says the law is not enforceable, and asked if it will be more enforceable now because income is generated.

Tim Solomon said many laws are not enforceable, mostly due to a lack of manpower. Law enforcement probably looked at this as a minor offence and is not high on the list as an emergency.

SENATOR SPRAGUE said no one encourages or condones smoking, but businesses are so busy covering their rears, and delegating that responsibility to someone else. He asked if this was a situation where an employer is always accessible as opposed to chasing a criminal who is hard to get, and if this is the proper way to do this.

Tim Solomon said he thinks it is. He said law enforcement is not always present when alcohol or tobacco products are purchased, and they don't want to run a sting operation against stores as have been done with alcohol purchases by minors.

SENATOR KLAMPE asked **Jennifer Brannon** if she testified she was in a group of students who tried to purchase cigarettes, and how many times did they go, how many times did they get the cigarettes, and how old is she.

Jennifer Brannon said went to 8 stores and was able to purchase cigarettes, another student, who is a freshman, went one time and was able to purchase cigarettes. She said she is 17 years old.

SENATOR MOHL asked about the amounts of fines, and why will the law be more enforceable now than before.

Tim Solomon said it will be more enforceable because there's a different group helping law enforcement. There have been many volunteers and teens willing to help, and the Department of Corrections has offered help with paper work. He said there aren't enough law enforcement officers to enforce this law by themselves.

SENATOR ECK asked about 100% availability of cigarettes from vending machines and how is this issue to be addressed.

Mona Jamison said there is a section in the Youth Access law not being amended which makes it clear vending machines have to be under the visual sight of the cash register or where a person selling is located. The license that would be suspended for 3 months on the 6th violation and 1 year on the 7th is the cigarette license, but is not the license to do business. She referred to page 1 of HB 539, line 19.

SENATOR SPRAGUE said that is reassuring.

{Tape: 1; Side: 2}

Closing by Sponsor:

REP. SOFT thanked the students who came from Missoula, Havre, Bozeman, Billings and Helena to speak for HB 539. He said this is an education, compliance, and health bill and asked the Committee to give the students a chance for this plan to work.

HEARING ON HB 557

Opening Statement by Sponsor:

REP. JON ELLINGSON, HD 65, Missoula, said HB 557 is a modest regulatory measure to allow the Department of Health and Environmental Sciences and local boards of health to establish regulations for sanitation in the practice of tattooing, which most other states already have. Montana is one of the few states that does not have such rules. He said this is a public health bill and addresses only public health issues.

The tattooing industry supports this Legislation because they realize in the absence of regulation there is serious public health risk, and this risk can tarnish the reputation of the tattooing industry. The public health issue, in the absence of regulations, is the spread of communicable diseases, particularly hepatitis and HIV. He discussed portions of page 2 and 4 of the

MONTANA SENATE
1995 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 3/13/95

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	X		
SHARON ESTRADA	X		
ARNIE MOHL	X		
MIKE SPRAUGE	X		
DOROTHY ECK	X		
EVE FRANKLIN	X		
TERRY KLAMPE	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JIM BURNETT, CHAIRMAN	X		

SEN:1995
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SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 2/13/95
BILL NO HB 539

Amendments to House Bill No. 539
Third Reading Copy

Requested by Rep. Soft
For the Committee on Public Health, Welfare and Safety

Prepared by David S. Niss
March 9, 1995

1. Page 4, lines 4 through 10.
Strike: subsection 6 in its entirety

Renumber: subsequent subsections

SENATE HEALTH & WELFARE
EXHIBIT NO. 3
DATE 3/13/95
BILL NO. HB 539

March 12,1995

MY NAME IS BRENDA SCHELM AND I AM THE ADVISOR OF THE SKYVIEW HIGH SCHOOL MTI GROUP AND A LEADER OF THE HEIGHTS ROPERS 4-H CLUB IN BILLINGS MONTANA.

MY MTI GROUP HAS TAKEN PART IN THE TOBACCO SURVEY IN THE BILLINGS COMMUNITY. THE CHILDREN WERE FROM THE AGES OF 14-17 AND WERE ABLE TO PURCHASE TOBACCO PRODUCTS 60% OF THE TIME WHICH IS A VERY HIGH PERCENTAGE. IN ONE PARTICULAR CASE THE CASHIER TOLD THE STUDENT TO COME BACK IN A LITTLE WHILE BECAUSE HER BOSS WAS THERE BUT SHE WOULD SELL TO HIM LATER.

THE PURCHASE OF TOBACCO PRODUCTS NEEDS TO BE MORE CLOSELY MONITORED AND ENFORCED. IT IS A COMMUNITY WIDE PROBLEM AND THEREFORE I THINK WILL TAKE A COMMUNITY WIDE APPROACH TO THE EDUCATION. THIS BILL IS ASKING FOR COMMUNITY INVOLVEMENT AND COMMUNITY EDUCATION. PART OF EDUCATION IS AWARENESS AND I FEEL AT THIS POINT IN TIME MANY OF OUR COMMUNITIES ARE UNAWARE OF THE HIGH USE AND ABUSE OF TOBACCO PRODUCTS. AS AN EDUCATOR IN THE BILLINGS COMMUNITY I HAVE SEEN A STEADY INCREASE OF TOBACCO USE AMONG THE TEENAGE GROUP. WE NEED TO WAKE UP AND TAKE A STAND TO GET THE POINT ACROSS BEFORE THEY GET HOOKED RATHER THAN TREATMENT AFTER THE FACT.

I STRONGLY AGREE WITH THE PASSAGE OF THIS BILL AND ENCOURAGE YOU AS LEGISLATORS TO ALSO SAY YES TO THIS MESSAGE WE ARE TRYING TO SEND TO OUR COMMUNITIES AS WELL AS THE BUSINESSES THAT SERVE US.

SENATE HEALTH & WELFARE
EXHIBIT NO. 4
DATE 3/13/95
BILL NO. HB 539

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

MARC RACICOT, GOVERNOR

1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930
FAX: (406) 444-4920

PO BOX 201301
HELENA, MONTANA 59620-1301

The Department of Corrections and the Human Services wholeheartedly supports HB 539.

Tobacco is a gateway drug and if we can prevent youth having access to tobacco we may prevent the early onset of use. Studies have shown that punitive measures alone are not effective with education it is more effective. HB 539 provides education to the merchant and clerks.

This is a federal requirement that we actively participate in random unannounced surveys. This legislation will help us achieve that requirement.

Respectfully Submitted
Marcia Armstrong

SENATE HEALTH & WELFARE
EXH. 5
DATE 3/13/95
BILL NO. HB 539

We want you to know where we stand.

To open, pull here.

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SENATE HEALTH & WELFARE
EXHIBIT NO. 6
DATE 3/13/95
BILL NO. HB 539

Amendments to House Bill No. 539
Third Reading Copy

For the Committee on Public Health, Welfare and Safety

Prepared by David S. Niss
March 10, 1995

1. Page 3, line 9.
Strike: "this section"
Insert: "subsection (2)"

2. Page 3, line 22.
Strike: "this section"
Insert: "subsection (2) and this subsection"

3. Page 3, line 28.
Following: "ASSESSMENT"
Insert: "against the owner of the establishment"

4. Page 4, line 3.
Strike: "SECTION"
Insert: "subsection"

5. Page 4, lines 4 through 10.
Strike: subsection (6) in its entirety
Insert: "(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of $25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of corrections and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of corrections and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing pursuant to the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of corrections and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection."

DATE 3/13/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB 504, 557, 539

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Nancy Davis-Walker	"Voice" Against Smoking	539	✓	
Richard L. Bender	NO SNUFF	539	✓	
Bob Edwards	MTI ALA	539	✓	
Devon Wacker	MTI ALA	539	✓	
Robert Watson	MTI ALA	539	✓	
Jennyn Eaton	" ALA	539	✓	
Jennifer Brannon	Leader of MTI ALA Tobacco free Montana	539	✓	
Marcia Armstrong	Dept Corrections & Human Services	539	✓	
[illegible]	Hill County Sheriff	539	✓	
Krista Young	HELP Committee, Havre	539	✓	
Rachael DeLoff	MTI ALA	539	✓	
Myra Jamison	Am. Lung Assn. of Mt	539	✓	
Charles R. Brookes	MT. Food Dist Assn	539	✓	
Thomas Helseth MD	Mont. Med. Ass	557	✓	
Becki Anderson	Nursing	539	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 3/13/95

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: HB 504, 557, 539

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Russ Cater	SRS	HB504	X	
Mamie Flint	MCA	HB504	✓	
Page Dringman	Philip Morris	539	✓	
Bill Devine	Center for Adolescent Dvlp	539	✓	
Toni Jensen	Am Lung Assn	557	✓	
Barb Booher	Mt. Nurses' Assoc.	HB 539	✓	
Kerry Campbell	American Lung Assoc.	HB 539	✓	
Cindy Hayden	American Lung Assoc	HB 539	✓	
Evangelina Dubbe	Yellowstone 4-H Student	HB539	✓	
Daphne Evans	MCCHD	HB539	✓	
Megan Cummings	Stevensville High	HB539	✓	
Harry Cummings	MCCHD	HB539	✓	
Char Maharg	DOR	HB539		
Gina Bruso	Billings MTI	HB539	✓	
Brenda Schulm	Skyview MTI Advison	HB539	✓	
Nancy Ellery	SRS	HB504	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

SENATOR BENEDICT asked if the reference to Medicaid could be left out of the language.

Vote: **The DO PASS motion for the Conceptual Amendment to HB 504 CARRIED UNANIMOUSLY.**

Motion/Vote: **SENATOR FRANKLIN moved HB 504 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 539

SENATOR BENEDICT said there are 2 amendments and the short amendment **(EXHIBIT 1)** is not necessary if the long amendment **(EXHIBIT 2)** is passed. The long amendment was given to him, with the concurrence of the bill's Sponsor, **REP. SOFT.** It provides for the penalty of $25.00 on the clerk who sells the tobacco products.

Motion/Vote: **SENATOR BENEDICT moved the Amendment (EXHIBIT 2) to HB 539 DO PASS. The motion CARRIED with SENATOR FRANKLIN voting NO.**

Motion: **SENATOR BAER moved HB 539 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR SPRAGUE** said he didn't think this bill should be in the Public Health Committee, but should have been in the Judiciary Committee or Business Committee.

SENATOR BENEDICT said he didn't think there was any intended mischief when the bill was assigned to the Public Health Committee. The Youth Tobacco bills were heard in the Business and Industry Committee in the last Session.

SENATOR SPRAGUE asked which House Committee this came from.

Mona Jamison said it came from the House Human Services Committee.

SENATOR BENEDICT said that is their Health Committee there.

SENATOR MOHL said maybe because the previous bill came out of Judiciary is the reason it's not working, and maybe this one will work.

SENATOR SPRAGUE made an observation that this bill has kids policing one another.

Vote: **The Be Concurred In As Amended motion CARRIED with SENATOR FRANKLIN voting NO.**

MONTANA SENATE
1995 LEGISLATURE
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

ROLL CALL DATE 3/15/95

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	X		
SHARON ESTRADA			X
ARNIE MOHL	X		
MIKE SPRAUGE	X		
DOROTHY ECK	X		
EVE FRANKLIN	X		
TERRY KLAMPE	X		
STEVE BENEDICT, VICE CHAIRMAN	X		
JIM BURNETT, CHAIRMAN	X		

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SENATE STANDING COMMITTEE REPORT

March 16, 1995

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration HB 539 (third reading copy -- blue), respectfully report that HB 539 be amended as follows and as so amended be concurred in.

Signed: Jim Burnett
Senator Jim Burnett, Chair

That such amendments read:

1. Page 3, line 9.
Strike: "this section"
Insert: "subsection (2)"

2. Page 3, line 22.
Strike: "this section"
Insert: "subsection (2) and this subsection"

3. Page 3, line 28.
Following: "ASSESSMENT"
Insert: "against the owner of the establishment"

4. Page 4, line 3.
Strike: "SECTION"
Insert: "subsection"

5. Page 4, lines 4 through 10.
Strike: subsection (6) in its entirety
Insert: "(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of $25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of corrections and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of corrections and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing pursuant to the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of corrections and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection."

-END-

Amd. Coord.
Sec. of Senate

Sen. Grosfield
Senator Carrying Bill

611124SC.SRF

SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 3/15/95
BILL NO. HB 539

Amendments to House Bill No. 539
Third Reading Copy

Requested by Rep. Soft
For the Committee on Public Health, Welfare and Safety

Prepared by David S. Niss
March 9, 1995

1. Page 4, lines 4 through 10.
Strike: subsection 6 in its entirety

Renumber: subsequent subsections

SENATE HEALTH & WELFARE
EXHIBIT NO. 2
DATE 3/15/95
BILL NO. HB 539

Amendments to House Bill No. 539
Third Reading Copy

For the Committee on Public Health, Welfare and Safety

Prepared by David S. Niss
March 10, 1995

1. Page 3, line 9.
Strike: "this section"
Insert: "subsection (2)"

2. Page 3, line 22.
Strike: "this section"
Insert: "subsection (2) and this subsection"

3. Page 3, line 28.
Following: "ASSESSMENT"
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4. Page 4, line 3.
Strike: "SECTION"
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